**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN**
**&**
**THE HONOURABLE MR. JUSTICE M.N.KRISHNAN**

**THURSDAY, THE 18TH JANUARY 2007 / 28TH PAUSHA 1928**

**ITR.No. 107 to 110 of 1999**
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**AGAINST THE ORDER IN RA NOS.251, 252, 253 & 254/COCH/97 IN ITA.648/649/650 & 657/COCH//1991 -Asst.Years 1987-88, 1988-89, 1987-88 and 1988-89 of I.T.A.TRIBUNAL,COCHIN BENCH**

**.....**

**APPLICANT:**
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**THE COMMISSIONER OF INCOME-TAX,**
**TRIVANDRUM.**

**BY ADV. SRI.P.K.R.MENON(SR.),SR.COUNSEL FOR IT**
**SRI.GEORGE K. GEORGE, SC FOR IT**

**RESPONDENT:**
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**M/S. BABY MARINE EXPORTS,**
**KALLUVILA, THANGASSERY,**
**KOLLAM.**

**BY ADV. SRI.C.KOCHUNNY NAIR**
**SRI.S.ARUN RAJ**
**SRI.ANTONY DOMINIC**
**SRI.E.K.NANDAKUMAR**
**SRI.A.K.JAYASANKAR NAMBIAR**
**SRI.ANIL D. NAIR**
**SMT.PRIYA MAHESH**
**SMT.PRIYA MANJOORAN**

**THIS TAX REFERENCE HAVING BEEN FINALLY HEARD ON 18/01/2007 ALONG WITH ITR NO. 108 OF 1999, ITR NO.109 OF 1999 AND ITR NO. 110 OF 1999, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**K.S. RADHAKRISHNAN & M.N. KRISHNAN, JJ.**

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**I.T.R. 107 TO 110 OF 1999**

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**Dated this the 18th day of January, 2007.**

**J U D G M E N T**

**Radhakrishnan, J.**

Heard counsel on both sides. Counsel appearing on either side submitted that these tax revisions can be disposed of in the following manner.

Following are the questions of law referred for consideration.

> "(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee is entitled to the deduction under Section 80 HHC on the goods exported through an agent (export house) by receiving foreign exchange by itself and in its name?
>
> (2) Whether, on the facts and in the circumstances of the case, the Tribunal is right in law and fact in interfering with the reopening of the assessments and holding it as bad in the eye of law under Section 147 of the I.T. Act within the meaning of Explanation 7(c)(ii) and (iii) when the assessment had been reopened within a period of 4 years from the end

> of the assessment year which is permissible even if there is no failure on the part of the assessee to make a return under Section 139 or in response to a notice issued under Section 142(1) or under Section 148 or to disclose fully and truly all material facts necessary for the assessment for that assessment year?"

The first question is already covered in favour of the Revenue by the decision of the Apex Court in **Sea Pearl Industries v. C.I.T. (SC) (247 ITR 578).** Hence, we answer the first question in favour of the Revenue and against the assessee.

2. We find it unnecessary to answer the second question, since we propose to direct the Commissioner(Appeals) to consider the issue afresh. Consequently, the order passed by the Tribunal and the Commissioner of Income Tax (Appeals) to that extend is set aside and the Commissioner (Appeals) is directed to pass fresh orders after hearing both the parties. In the meanwhile, there will be an interim stay of recovery of tax. Considering the fact that the assessment relates to the years 1987-88 and 1988-89, the

Commissioner of Appeals will pass final orders within a period of three months from the date of receipt of a copy of this judgment. Reference is answered accordingly.

Registry to communicate this order to the Commissioner of Appeals as well as to the Tribunal.

**K.S. RADHAKRISHNAN, JUDGE.**

**M.N. KRISHNAN, JUDGE.**

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**K.S. RADHAKRISHNAN &**
**M.N. KRISHNAN, JJ.**
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**I.T.R.107 TO 110 OF1999**
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**J U D G M E N T**

**18th January, 2007.**